



# California Regulatory Notice Register

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*Time-  
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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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## PROPOSED ACTION ON REGULATIONS

*Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.*

### TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Fair Political Practices Commission will consider the proposed regulations at a public hearing on or after April 3, 2003 at 9:30 a.m. Written comments should be received at the Commission offices no later than noon on April 2, 2003.

#### BACKGROUND/OVERVIEW

On November 7, 2000, the voters approved Proposition 34, which significantly amended the Political Reform Act ("Act"). Among those changes is a new statute, section 85306 of the Government Code. Generally speaking, the new law governs the treatment of contributions that were raised before the effective date of Proposition 34.

At its January 2003, meeting, the Commission adopted Emergency Regulation 18530.2, implementing section 85306. The regulation governs the circumstances under which candidates may use funds on hand on the effective date of Proposition 34 in future elections. The Commission will consider permanently adopting this regulation.

#### REGULATORY ACTION

Adopt 2 Cal. Code Regs. § 18530.2: The proposed regulation governs the circumstances under which candidates may use funds on hand on the effective date of Proposition 34 in future elections. Specifically, the regulation permits candidates unlimited transfers of those funds for use in future elections and provides accounting rules to determine the amounts that may be transferred. The proposed regulation is identical to emergency regulation 18530.2.

#### FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

#### AUTHORITY

Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

#### REFERENCE

The purpose of this regulation is to implement, interpret and make specific Government Code section 85306.

#### CONTACT

Any inquiries should be made to C. Scott Tocher, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at [www.fppc.ca.gov](http://www.fppc.ca.gov).

#### ADDITIONAL COMMENTS

After the hearing, the Commission may adopt or repeal the proposed regulation if it remains substantially the same as described or as in the text originally made available to the public. The Commission may make changes to the proposed regulation before its adoption or repeal.

### TITLE 2. VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

**Proposed Regulations: Title 2, California Code of Regulations, Sections 649.23–649.25.**

#### REVISED NOTICE OF PROPOSED RULEMAKING

#### NATURE OF PUBLIC HEARING

The Victim Compensation and Government Claims Board (Board) will conduct a public hearing concerning this proposed rulemaking on April 16, 2003, beginning at 9:00 a.m., at the office of the Board, 630 K Street, first floor hearing room, Sacramento, California. Any interested person or authorized representative may present oral or written statements, arguments or contentions relevant to the rulemaking action described in this notice. The Board may impose reasonable limits on oral presentations. Persons making oral presentations at the hearing are asked to provide their comments in writing at the conclusion of their remarks.

The hearing location is accessible to persons with disabilities. If you need accommodation, including a sign language interpreter, please notify the contact person listed below at least two weeks before the hearing so that an accommodation may be provided.

#### **SUBMISSION OF WRITTEN COMMENTS**

Written comments other than those presented at the hearing may be submitted to the Board at the following address by the deadline given below:

Victim Compensation and Government  
Claims Board  
630 K Street, Fifth Floor  
P.O. Box 48  
Sacramento, CA 95812-0048  
Attention: Judith A. Kopec,  
Senior Staff Counsel

Comments that are no more than ten pages will be accepted by fax at (916) 327-2933. A fax transmission must be completed by the time given below in order to be timely submitted.

Comments may also be submitted electronically to Judith A. Kopec, Senior Staff Counsel at [jkopec@voc.ca.gov](mailto:jkopec@voc.ca.gov) by the deadline given below.

Comments must be received by 4:00 p.m. on April 16, 2003, in order to be considered by the Board.

#### **AUTHORITY CITATION**

The proposed regulations are authorized by Government Code section 13920(c).

#### **REFERENCE CITATION**

The proposed regulations implement Government Code sections 13954, 13957(a)(2), 13957.2(a)

#### **INFORMATIVE DIGEST**

##### ***Summary of Existing Laws and Effect of Proposed Rulemaking.***

Existing law provides that the Victim Compensation Program (Program), administered by the Victim Compensation and Government Claims Board (Board), reimburse eligible persons for outpatient psychiatric, psychological or other mental health counseling related expenses that are necessary as a direct result of the qualifying crime. The statutes governing the Program were revised and reorganized, effective January 1, 2003. (Stats. 2002, ch. 1141.) Both the current and new statutes establish a framework for the payment of outpatient mental health counseling related expenses based on whether the person being treated is a victim

Unless dire or exceptional circumstances require more extensive treatment, the Program may reimburse, effective January 1, 2003, up to \$10,000 for outpatient mental health counseling related expenses for a victim, or a derivative victim who is the surviving parent,

sibling, child, spouse, fiancé or fiancée of a victim of a crime that directly resulted in the death of the victim. In addition, not more than two specified derivative victims, who are primary caretakers of a minor victim and are fully eligible for reimbursement, may share a total of \$10,000.

Unless dire or exceptional circumstances require more extensive treatment, the Program may reimburse, effective January 1, 2003, up to \$3,000 for mental health counseling related expenses for a derivative victim who is not eligible for up to \$10,000. However, a derivative victim who was not the primary caretaker of a minor victim at the time of the crime shall only be reimbursed if the counseling is necessary for the treatment of the victim. A victim of a specific violation of unlawful sexual intercourse may be limited to up to \$3,000, and a derivative victim of the same violation of unlawful sexual intercourse may not be eligible for reimbursement for mental health counseling expenses.

Existing statutes require the Program to verify the treatment for which reimbursement is requested, the circumstances of the qualifying crime, the amounts paid or received by or for the applicant, and any other pertinent information deemed necessary. Existing law requires that the applicant shall cooperate with Program staff to verify information.

Existing statutes authorize the Board to establish service limitations for reimbursement of mental health counseling services. To ensure service limitations that are uniform and appropriate to the levels of treatment required by the applicant, the Board may review all claims for mental health counseling services to ensure their medical necessity

Existing regulations require an applicant to submit a complete statement of losses and reimbursements directly related to the qualifying crime, including the dates that mental health services were provided, a description of the services, a statement that the services were received and were required as a direct result of the qualifying crime and for no other reason, and whether the mental health counseling was provided in an individual, family or group setting. The provider of mental health services must submit an itemized statement for services, the license number of the professional certificate issued to the mental health practitioner providing the services, and the provider's business address and phone number.

The proposed regulations provide that specified mental health counseling service limitations shall be deemed to be appropriate to the level of treatment medically necessary unless additional reimbursement is authorized as provided in the proposed regulations. The proposed regulations allow for five initial mental health counseling sessions to be reimbursed and describe the information necessary to authorize additional sessions to be reimbursed. The proposed

regulations establish the specific factors that shall be considered when evaluating a request for additional reimbursement.

The proposed regulations provide that a mental health treatment provider who receives payment from or provides services reimbursed by, the Program shall be subject to clinical or fiscal audit, or both.

***Policy Statement Overview.***

The objective of the proposed regulations is to implement service limitations for mental health counseling that are appropriate to the level of treatment medically necessary as a direct result of a qualifying crime in order to provide fiscal stability to the Program.

***Comparable Federal Statute or Regulations.***

The proposed regulations do not differ substantially from an existing comparable federal statute or regulation.

**Determination on Imposition of Mandate on Local Agencies or School Districts.** The Board has determined that the proposed rulemaking does not impose a mandate on local agencies or school districts, or a mandate that is required to be reimbursed under Part 7 (beginning with section 17500), Division 4, Title 2, of the Government Code.

**Fiscal Impact on Local Agencies or School Districts.** The proposed rulemaking does not impose a cost to any local agency or school district that is required to be reimbursed under Part 7 (beginning with section 17500), Division 4, Title 2, of the Government Code, or any non-discretionary cost or savings on local agencies.

**Fiscal Impact on State Government.** The proposed rulemaking is estimated to result in savings of \$1 million to the Restitution Fund in the current State Fiscal Year. The proposed rulemaking does not impose a cost or result in savings in federal funding to the State.

**Initial Determination Regarding Economic Impact on Business.** The Board has made an initial determination that the proposed rulemaking will not have a significant adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed rulemaking will not have a significant adverse economic impact on businesses because it does not directly affect any business in California. Businesses are not required to comply with or enforce the proposed rulemaking, and will not derive a benefit or suffer a detriment from its enforcement.

**Cost Impact on Representative Person or Business.** The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed rulemaking.

**Assessment of Effect on Jobs and Businesses.** The Board has determined that the proposed rulemaking will not significantly affect the creation or elimination of jobs in California; the creation of new businesses or the elimination of existing businesses within California; or the expansion of businesses currently doing business in California.

**Initial Determination Regarding Impact on Housing Costs.** The Board has determined that the proposed rulemaking will not have a significant effect on housing costs.

**Determination Regarding Effect on Small Business.** The Board has determined that the proposed rulemaking does not affect small business. Small businesses are not legally required to comply with or enforce the proposed rulemaking, and will not derive a benefit or incur a detriment from its enforcement.

**Consideration of Alternatives.** The Board must determine that no reasonable alternative considered by the Board or otherwise identified and brought to the Board's attention would be effective in carrying out the purpose for which the rulemaking is proposed or would be as effective and less burdensome to affected private persons than the proposed rulemaking.

**Agency Representative and Designate Backup Contact Person.** Inquiries concerning this rulemaking action may be directed to:

Judith A. Kopec, Senior Staff Counsel  
Victim Compensation and Government  
Claims Board  
630 K Street, 5th Floor  
P.O. Box 48  
Sacramento, CA 95812-0048  
Telephone: (916) 327-1998  
Fax: (916) 327-2933  
E-mail: [jkopec@voc.ca.gov](mailto:jkopec@voc.ca.gov)

The designated backup person to whom inquiries may be directed in Ms. Kopec's absence is:

Melissa Turben, Legal Secretary  
Victim Compensation and Government  
Claims Board  
630 K Street, 5th Floor  
P.O. Box 48  
Sacramento, CA 95812-0048  
Telephone: (916) 327-1998  
Fax: (916) 327-2933  
E-mail: [mturben@voc.ca.gov](mailto:mturben@voc.ca.gov)

**AVAILABILITY OF STATEMENT OF REASONS  
AND TEXT OF PROPOSED  
AMENDED REGULATION**

The Board has prepared an initial statement of reasons for the proposed rulemaking, and has available all the information upon which the proposed rulemaking is based and the text of the proposed regulations, which are available for public review. Copies of the



initial statement of reasons and the text of the proposed regulations may be requested from the designated backup contact person identified above.

#### **AVAILABILITY OF MODIFIED REGULATION**

After the public comment period and public hearing, the Board may adopt the proposed regulations substantially as proposed. If substantive modifications that are sufficiently related to the original proposed regulations are made, the modified text will be made available at least 15 days before the Board adopts, amends, or repeals the resulting regulations.

#### **AVAILABILITY OF FINAL STATEMENT OF REASONS**

After the conclusion of the hearing and public comment period, the Board will prepare a final statement of reasons for this proposed rulemaking. Copies of the final statement of reasons may be obtained from the designated backup contact person identified above.

#### **ACCESSING RULEMAKING MATERIALS THROUGH INTERNET WEB SITE**

Documents pertaining to the proposed rulemaking can be accessed through the Board's internet web site. To do so, go to [www.boc.ca.gov](http://www.boc.ca.gov), then scroll to the "Featured Content" section, then to the "Legislation, Regulations, Rules and Precedent Decisions" section, then click on "Regulations," then click on "VCP Rulemaking 2003," click on "Mental Health Limitations" and select the document that you wish to view.

## **TITLE 2. VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**

### **Proposed Amended Regulation: Title 2, California Code of Regulations, Section 649.11.**

#### **NOTICE OF PROPOSED RULEMAKING**

##### **NATURE OF PUBLIC HEARING**

The Victim Compensation and Government Claims Board (Board) will conduct a public hearing concerning this proposed rulemaking on April 15, 2003, beginning at 9:00 a.m., at the office of the Board, 630 K Street, first floor hearing room, Sacramento, California. Any interested person or authorized representative may present oral or written statements, arguments or contentions relevant to the rulemaking action described in this notice. The Board may impose reasonable limits on oral presentations. Persons making oral presentations at the hearing are asked to provide their comments in writing at the conclusion of their remarks.

The hearing location is accessible to persons with disabilities. If you need accommodation, including a

sign language interpreter, please notify the contact person listed below at least two weeks before the hearing so that an accommodation may be provided.

#### **SUBMISSION OF WRITTEN COMMENTS**

Written comments other than those presented at the hearing may be submitted to the Board at the following address by the deadline given below:

Victim Compensation and Government  
Claims Board  
630 K Street, Fifth Floor  
P.O. Box 48  
Sacramento, CA 95812-0048  
Attention: Judith A. Kopec,  
Senior Staff Counsel

Comments that are no more than ten pages will be accepted by fax at (916) 327-2933. A fax transmission must be completed by the time given below in order to be timely submitted.

Comments may also be submitted electronically to Judith A. Kopec, Senior Staff Counsel at [jkopec@voc.ca.gov](mailto:jkopec@voc.ca.gov) by the deadline given below.

Comments must be received by 4:00 p.m. on April 15, 2003, in order to be considered by the Board.

#### **AUTHORITY CITATION**

The proposed amended regulation is authorized by Government Code section 13920(c).

#### **REFERENCE CITATION**

The proposed amended regulation implements Government Code section 13952.5.

#### **INFORMATIVE DIGEST**

#### ***Summary of Existing Laws and Effect of Proposed Rulemaking.***

Existing law provides that the Victim Compensation Program (Program), administered by the Board, reimburses eligible persons for a variety of expenses, including medical, mental health and funeral and burial expenses, or income or support losses, that are necessary as a direct result of a qualifying crime. The statutes governing the Program were revised and reorganized, effective January 1, 2003. (Stats. 2002, ch. 1141.) Both the former and new statutes authorize the Board to make an emergency award to eligible persons.

Effective January 1, 2003, the Board may make an emergency award to any person eligible for Program assistance if the award is necessary to avoid or mitigate substantial hardship that may result from delaying compensation until complete consideration of an application. The amount of an emergency award depends upon the immediate needs of the person receiving the award.

Existing law provides that the Board shall establish the method for requesting an emergency award, which may include the submission of a regular application. The Board may grant an emergency award based solely on the application. The Board may refuse to grant an emergency award if there is reason to believe that the applicant will not be eligible for compensation. An emergency award shall be paid within 30 calendar days of the application. This period can be extended by additional 10-day periods by agreement of the applicant or his or her representative.

Existing regulation requires that an application for an emergency award comply with a Government Code section that was repealed effective January 1, 2003.

The proposed amended regulation authorizes an applicant to apply for an emergency award on the Program application. The proposed amended regulation requires the Board to expedite verification of the application and authorizes staff to use telephone and electronic means to quickly obtain necessary information to evaluate an application for an emergency award.

The proposed amended regulation authorizes an emergency award when it is necessary to avoid or mitigate substantial hardship that is the direct result of the qualifying crime. Substantial hardship includes the inability to provide for the necessities of life or to pay for funeral and burial or crime scene cleaning expenses without the emergency award. Immediate financial need shall be determined by the financial assistance needed to avoid substantial hardship before the receipt of regular assistance.

The proposed amended regulation requires that an applicant for an emergency award provide sufficient information to substantiate it is necessary to avoid substantial hardship and there is an immediate finance need as a direct result of the qualifying crime. The amount of the emergency award requested shall be considered when determining the amount and type of required information. If sufficient information is not provided for an emergency award, the application shall be processed as an application for regular assistance.

#### ***Policy Statement Overview.***

The broad objective of the proposed amended regulation is to interpret and implement the Board's authority to authorize emergency awards. There are several specific objectives as well, including streamlining the process for applying for an emergency award, and requiring that the substantial hardship and immediate need upon which the request for an emergency award are based are the direct result of the qualifying crime.

#### ***Comparable Federal Statute or Regulations.***

The proposed amended regulation does not differ substantially from an existing comparable federal statute or regulation.

**Determination on Imposition of Mandate on Local Agencies or School Districts.** The Board has determined that the proposed rulemaking does not impose a mandate on local agencies or school districts that is required to be reimbursed under Part 7 (beginning with section 17500), Division 4, Title 2, of the Government Code.

**Fiscal Impact on Local Agencies or School Districts.** The proposed rulemaking does not impose a cost to any local agency or school district that is required to be reimbursed under Part 7 (beginning with section 17500), Division 4, Title 2, of the Government Code, or any non-discretionary cost or savings on local agencies.

**Fiscal Impact on State Government.** The proposed rulemaking does not impose a cost or result in savings to any state agency, or impose a cost or result in savings in federal funding to the State.

**Initial Determination Regarding Economic Impact on Business.** The Board has made an initial determination that the proposed rulemaking will not have a significant adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed rulemaking will not have a significant adverse economic impact on businesses because it does not directly affect any business in California. Businesses are not required to comply with or enforce the proposed rulemaking, and will not derive a benefit or suffer a detriment from its enforcement.

**Cost Impact on Representative Person or Business.** The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed rulemaking.

**Assessment of Effect on Jobs and Businesses.** The Board has determined that the proposed rulemaking will not significantly affect the creation or elimination of jobs in California; the creation of new businesses or the elimination of existing businesses within California; or the expansion of businesses currently doing business in California.

**Initial Determination Regarding Impact on Housing Costs.** The Board has determined that the proposed rulemaking will not have a significant effect on housing costs.

**Determination Regarding Effect on Small Business.** The Board has determined that the proposed rulemaking does not affect small business. Small

businesses are not legally required to comply with or enforce the proposed rulemaking, and will not derive a benefit or incur a detriment from its enforcement.

**Consideration of Alternatives.** The Board must determine that no reasonable alternative considered by the Board or otherwise identified and brought to the Board's attention would be effective in carrying out the purpose for which the rulemaking is proposed or would be as effective and less burdensome to affected private persons than the proposed rulemaking.

**Agency Representative and Designate Backup Contact Person.** Inquiries concerning this rulemaking action may be directed to:

Judith A. Kopec, Senior Staff Counsel  
Victim Compensation and Government  
Claims Board  
630 K Street, 5th Floor  
P.O. Box 48  
Sacramento, CA 95812-0048  
Telephone: (916) 327-1998  
Fax: (916) 327-2933  
E-mail: [jkopec@voc.ca.gov](mailto:jkopec@voc.ca.gov)

The designated backup person to whom inquiries may be directed in Ms. Kopec's absence is:

Melissa Turben, Legal Secretary  
Victim Compensation and Government  
Claims Board  
630 K Street, 5th Floor  
P.O. Box 48  
Sacramento, CA 95812-0048  
Telephone: (916) 327-1998  
Fax: (916) 327-2933  
E-mail: [mturben@voc.ca.gov](mailto:mturben@voc.ca.gov)

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDED REGULATION

The Board has prepared an initial statement of reasons for the proposed rulemaking, and has available all the information upon which the proposed rulemaking is based and the text of the proposed amended regulation, which are available for public review. Copies of the initial statement of reasons and the text of the proposed amended regulation may be requested from the designated backup contact person identified above.

#### AVAILABILITY OF MODIFIED REGULATION

After the public comment period and public hearing, the Board may adopt the proposed amended regulation substantially as proposed. If substantive modifications that are sufficiently related to the original proposed amended regulation are made, the modified text will be made available at least 15 days before the Board adopts, amends, or repeals the resulting regulation.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

After the conclusion of the hearing and public comment period, the Board will prepare a final statement of reasons for this proposed rulemaking. Copies of the final statement of reasons may be obtained from the designated backup contact person identified above.

#### ACCESSING RULEMAKING MATERIALS THROUGH INTERNET WEB SITE

Documents pertaining to the proposed rulemaking can be accessed through the Board's internet web site. To do so, go to [www.voc.ca.gov](http://www.voc.ca.gov), then scroll to the "Featured Content" section, then to the "Legislation, Regulations, Rules and Precedent Decisions" section, then click on "Regulations," then click on "VCP Rulemaking 2003," click on "Emergency Awards" and select the document that you wish to view.

### TITLE 4. BUREAU OF HOME FURNISHINGS AND THERMAL INSULATION

NOTICE IS HEREBY GIVEN that the Bureau of Home Furnishings and Thermal Insulation (hereafter "Bureau") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at two hearings to be held on:

#### NORTHERN CALIFORNIA

April 22, 2003

10:00 a.m.

Edmund G. "Pat" Brown Building  
505 Van Ness Avenue  
San Francisco, California 94102

#### SOUTHERN CALIFORNIA

April 24, 2003

10:00 a.m.

So. Coast Air Quality Management Dist.  
21865 E. Copley Drive  
Diamond Bar, California 91765

If possible, please notify the Bureau's Contact Person listed on this notice of your intention to attend and present oral testimony at the public hearings. This will allow the Bureau to determine if time limits will be necessary for each attendee's comments. All comments will be accepted regardless of whether or not the Bureau has been notified of a presenter's attendance.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received in the Bureau's office no later than 5:00 p.m. on April 24, 2003 or must be received by the Bureau at the



hearings. The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

#### AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 19034 and 19161 of the Business and Professions Code and to implement, interpret or make specific Section 19161, of said Code, the Bureau is considering changes to Title 4, Division 3, of the California Code of Regulations as follows:

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

1. Amend Section 1371—Business and Professions Code Section 19161, as amended by Chapter 199, Stats. 2001 (AB 603—Dutra), authorizes the Bureau to adopt regulations no later than January 1, 2004, requiring fire retardant mattresses, including futons, and mattress/box spring sets sold in California to meet a resistance to an open-flame test. The standard must use a pass or fail performance criteria based on a test method developed by the Bureau. The proposed regulations will establish that standard.
2. Repeal Section 1373.1—This section is being repealed because it is no longer applicable with the new standard.

#### FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 through 17630 Requires Reimbursement: None

Business Impact: The Bureau has made an initial determination that the proposed regulatory action would not have significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:

Based upon numerous fact finding meetings and discussion with the mattress industry, supply dealers in the United States and abroad, and with other members of the industry, adverse long term economic impact has not been a major issue. The strategy most likely used to comply with the new standard will be the use of flame-blocking barriers, fire retardant threads, and encasement of the core fillings with fire retardant materials. The Bureau believes there will be adequate availability of flame-blocking barrier materials and other components for use in constructing compliant mattresses.

The cost of these supplies do not constitute a significant cost to the manufacturers, however, some additional raw material cost and labor cost for the additional production step of adding the barrier materials will be incurred. Assurance has been obtained from the major national mattress manufacturers (that constitute 60–70% of the manufacturing volume in the United States), that all mattresses will be constructed to meet the new California standard for sale throughout the United States. Therefore, California mattress manufacturers will not be at a disadvantage complying with the new standard.

Impact on Jobs/New Businesses: The Bureau of Home Furnishings and Thermal Insulation has determined that this regulatory proposal may:

- A. Create the following types of jobs:
  1. Suppliers of flame resistant materials including fabrics, fire blocking barriers, fire resistant threads and other fastening components and filling materials;
  2. Productions line jobs in the manufacturing plants where the new barriers will be added.
- B. Create and/or expand the following types of new businesses:
 

Suppliers of flame resistant material materials including fabrics, fire-blocking barriers, fire resistant threads, and other fastening components and filling materials.
- C. Eliminate the following types of existing businesses in California:
 

Very small mattress manufacturers in competition with the large national manufacturers could suffer an inability to produce compliant mattresses at competitive costs.

Cost Impact on Representative Private Person or Business: The cost impacts that a representative private person or business would necessarily incur in

reasonable compliance with the proposed action and that are known to the Bureau of Home Furnishings and Thermal Insulation are:

The inclusion of fire resistant components and production labor will result in some wholesale cost increase that will be passed along to the consumer, but the amount is not known. The benefit to consumers protected from bedroom fires and the reduction of death, injuries and loss of property will out-weigh the insignificant cost passed on from the manufacturers.

Effect on Housing Costs: None

#### EFFECT ON SMALL BUSINESS

The Bureau of Home Furnishings and Thermal Insulation has determined that the proposed regulations will significantly affect small businesses.

#### CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative that it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearings.

#### INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

#### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the

Bureau of Home Furnishings and Thermal  
Insulation  
3485 Orange Grove Avenue  
North Highlands, California 95660

#### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the web site, [www.bhfti.ca.gov](http://www.bhfti.ca.gov).

#### CONTACT PERSON

Inquiries concerning the proposed administrative action may be direct to:

Name: Susan Lancara, Program Analyst  
Address: 3485 Orange Grove Avenue  
North Highlands, California 95660  
Telephone: (916) 574-0282  
Fax: (916) 574-2043  
E-mail: [Susan\\_Lancara@dca.ca.gov](mailto:Susan_Lancara@dca.ca.gov)

Inquiries concerning the substance of the proposed regulations may be directed to:

Name: John McCormack, Manager  
Research and Development  
Address: 3485 Orange Grove Avenue  
North Highlands, CA 95660  
Telephone: (916) 574-2057  
Fax Number: (916) 574-2043  
E-Mail: [John\\_McCormack@dca.ca.gov](mailto:John_McCormack@dca.ca.gov)

Web Site Address: Materials regarding this proposal can be found at [www.bhfti.ca.gov](http://www.bhfti.ca.gov).

### TITLE 4. CALIFORNIA SCHOOL FINANCE AUTHORITY

#### ARTICLE 1, SECTIONS 10151 TO 10162 TITLE 4, DIVISION 15

#### CALIFORNIA CODE OF REGULATIONS

NOTICE IS HEREBY GIVEN that the California School Finance Authority (the "Authority"), organized and operating pursuant to Sections 17170 through 17199.5 of the Education Code (the "Act"), proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

#### PROPOSED REGULATORY ACTION

The Authority proposes to adopt Sections 10151 through 10162 of Title 4 of the California Code of Regulations (the "Regulations"). The Regulations implement the Authority's responsibilities related to the Charter School Facilities Program (the "Program") established pursuant to Article 12 of Chapter 12.5 of Part 10 of the Education Code.

#### AUTHORITY AND REFERENCE

Authority: Section 17078.57, Education Code. The Regulations are authorized by Section 17078.57 of the Education Code.

Reference: Sections 17078.50, 17078.52, 17078.53, 17078.54, 17078.56, 17078.57, and 17078.58. The Regulations implement, interpret or make specific Sections 17078.50, 17078.52, 17078.53, 17078.54, 17078.56, 17078.57, and 17078.58 of the Education Code.

INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW

Recently enacted statutory provisions created the Program to “provide funding to qualifying entities for the purpose of establishing school facilities for charter school pupils.” (Education Code section 17078.52(a).) The Program provides for \$100,000,000 to be set aside from the bonds issued under the Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47, passed on November 5, 2002), for the purposes of financing charter school construction projects. A charter school or a school district acting on behalf of a charter school may apply for financing under the Program to fund specified costs relating to charter school construction projects. The applicants are required to provide a local matching share of 50% that may be provided through a lump sum payment, lease payments, or a combination of both.

Applications must be submitted to the State Allocation Board (the “Board”) by March 31, 2003. The Board must then approve preliminary apportionments to applicants based on a number of preference items, such as geographical diversity, size of school diversity, nonprofit status, and whether a school is overcrowded. Prior to the Board taking action on the preliminary apportionment requests, the Authority is required to determine whether applicants are “financially sound,” defined as “a charter school that has demonstrated over a period of time determined by the authority, but not less than 24 months immediately preceding the submission of the application, that it is a financially capable concern, as measured by criteria established by the authority.” (Education Code section 17078.52(c)(4).)

In connection with its role in the Program, the Authority is authorized to:

“adopt regulations establishing uniform terms and conditions that shall apply equally to all projects for funding . . . including, but not limited to, all of the following:

- (1) The process for determining the manner in which the applicant will pay its local matching share, including the method for determining any lease payments to be made in lieu of the local matching share. The regulations shall comply with all of the following criteria:
  - (A) The payment process set forth in Section 17199.4 may be used.
  - (B) The payment process shall permit lump-sum local matching payments and shall permit establishment of a schedule for lease payments to be made in lieu of the local matching share.

- (C) The lease payment schedule shall be calculated by amortizing one-half of the total approved project costs, minus any lump-sum payments, over the entire payment period as set forth in Section 17078.58.
  - (D) The payment schedule for lease payments in lieu of the local matching funds pursuant to this section shall be based upon payment, within a reasonable period of time not to exceed a 30-year period, of one-half of the total eligible project costs, and shall be calculated in a manner that is designed to result in full payment of that portion, together with interest thereon at the rate paid on moneys in the Pooled Money Investment Account as of the date of disbursement of the funding.
- (2) The method for determining whether a charter school is financially sound. In the case of a charter school chartered by a school district that is located outside of the school district that chartered it, the method developed by the authority shall include, but shall not be limited to, a site visit to the school facility currently being used by the charter school during hours when pupils are present and instruction is being provided.
  - (3) (A) Security provisions, including, but not limited to, the requirement that title to project facilities be held by the school district in which the facility is to be physically located, in trust, for the benefit of the state public school system.
  - (B) The authority shall adopt a mechanism whereby a person or entity who provides a substantial contribution that is applied to the costs of the project in excess of the state share and the local matching share may be granted a security interest to be satisfied from the proceeds, if any, realized when the property is ultimately disposed of as set forth in paragraph (5) of subdivision (b) of Section 17078.62.
  - (4) The method for integrating funding pursuant to this article with the authority’s general procedures pursuant to subdivision (i) of Section 17180 for otherwise funding projects eligible for funding under this chapter, if appropriate.
  - (5) The process to be used for release of funds for approved projects pursuant to this article.” (Education Code section 17078.57(a).)

Subsection (b) of 17078.57 provides that initial regulations adopted pursuant to subsection (a) shall be deemed to be emergency regulations.



In addition to the preliminary apportionment, the Board will also make a final apportionment to each eligible applicant once it has finalized its project. Because the time between preliminary and final apportionment could be up to three years, the Authority will review the financial soundness of each eligible applicant prior to the final apportionment.

The Regulations implement section 17078.57, provide the criteria and process by which the Authority will evaluate each applicant's financial soundness, and includes the application which each applicant must submit.

#### **OTHER MATTERS PRESCRIBED BY STATUTES APPLICABLE TO THE SPECIFIC STATE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS**

No other matters prescribed by statute are applicable to the Authority or to any specific regulation or class of regulations pursuant to 11346.5(a)(4) of the California Government Code pertaining to the proposed regulations or to the Authority.

#### **MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The Authority has determined that the Regulations do not impose a mandate on local agencies or school districts.

#### **FISCAL IMPACT**

The Authority has determined that the emergency regulations do not impose any additional cost or savings to any state agency, any costs to any local agency or school district requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other non-discretionary cost or savings to any local agency, or any cost or savings in federal funding to the State.

While the Authority will incur additional expenses in implementing and administering the portion of the Program that is the responsibility of the Authority, Education Code section 17078.54(e) provides that the Authority may charge such additional expenses against the Charter School Facilities Account (Account) which is established pursuant to Education Code section 17078.52(b). The Account consists of \$100,000,000 set aside for the Program out of proceeds of the general obligation bonds authorized by the voters in November 2002 via passage of Proposition 47. Section 17078.54(e) allows the Authority, with Department of Finance approval, to access up to 2.5% of the \$100,000,000 for the Authority's administrative costs. There, however, is no fiscal impact on the State's General Fund or requiring additional appropriations by the Legislature. Therefore, pursuant to the State Administrative Manual Section 6680, a

Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any State Agency pursuant to Government Code sections 11346.1(b) or 11346.5(a)(6).

#### **INITIAL DETERMINATION REGARDING ANY SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The Authority has made an initial determination that the Regulations will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

#### **EFFECT ON SMALL BUSINESSES**

The Authority has determined that the adoption of the Regulations will not affect small business. Its purpose is to interpret and implement those portions of the Program that are the Authority's responsibility. The Program is a voluntary financing program available to charter schools to develop charter school facilities.

#### **COST IMPACTS**

The Authority is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the Regulations.

#### **ASSESSMENT OF EFFECT ON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION**

The Authority has determined, pursuant to Government Code section 11346.3(b), that the Regulations will not have an effect on jobs and business expansion, elimination or creation.

#### **COST IMPACT ON HOUSING**

The Regulations will not have any effect on housing costs.

#### **REASONABLE ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the Authority must determine that no reasonable alternative to the Regulations considered by the Authority or that has otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the Regulations are proposed or would be as effective and less burdensome to affected private persons than the Regulations.

The Authority invites interested persons to present statements with respect to alternatives to the Regulations during the written comment period.



**AGENCY CONTACT PERSON**

Written comments, inquiries and any questions regarding the substance of the Regulations shall be submitted or directed to:

Lara Larramendi-Blakely, Executive Director  
California School Finance Authority  
915 Capitol Mall  
Sacramento, CA 95814  
(916) 651-8157

The following person is designated as a backup contact person for inquiries only regarding the Regulations:

Mark Paxson, Senior Staff Counsel  
State Treasurer's Office  
(916) 651-6846

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the Regulations to the Authority. The written comment period on the Regulations will end at 5:00 p.m. on April 18, 2003. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time for them to be considered by the Authority. In the event that changes are made to the Regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified Regulations for 15 calendar days after the date on which such Regulations, as changed or modified are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

**AVAILABILITY OF INITIAL STATEMENT OF REASONS, RULEMAKING FILE AND EXPRESS TERMS OF PROPOSED REGULATIONS**

Pursuant to the California Government Code, the Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall during normal business hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the Regulations. Copies of these items are available upon request, from the Agency Contact Person designated in this Notice. This address will also be the location for inspection of the rulemaking file and any other public records, including reports, documentation and other materials related to this proposed regulatory action. In addition, the rulemaking file, including the

Initial Statement of Reasons and the proposed text, may be viewed on the Authority's website at <http://www.treasurer.ca.gov/csfa>.

**PUBLIC HEARING**

No public hearing regarding the Regulations has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to the Authority at least 15 days before the end of the written comment period. Such request should be addressed to the Agency Contact Person identified in this Notice and should specify the Regulations for which the Hearing is being requested.

**15-DAY AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After the written comment period ends and following a public hearing, if any is requested, the Authority may adopt the Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public (including through the Authority's website described above) for at least fifteen (15) calendar days before the Authority adopts the proposed Regulations, as modified. Inquiries about and requests for written copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice.

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

The Authority is required to prepare a Final Statement of Reasons pursuant to Government Code section 11346.9. Once the Authority has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy and will be available on the Authority's website described above. Written requests for copies should be addressed to the Agency Contact Person identified in this Notice.

**TITLE 5. SCHOLARSHARE INVESTMENT BOARD****NOTICE OF PROPOSED RULEMAKING**

Notice is hereby given that the ScholarShare Investment Board proposes to amend Sections 30950, 30953, 30954, 30958 and 30959 of the existing Golden State ScholarShare Trust Program.

**PUBLIC HEARING**

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a public hearing if it receives a written request from any interested person, or his or her authorized representa-

tive, no later than 15 days before the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period, if no public hearing is requested, the ScholarShare Investment Board, on its own motion, may adopt the proposal substantially as set forth without further notice.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m.** on **April 14, 2003**. The Board will consider only comments received at the Board's offices by that time. Written comments or petitions requesting a public hearing should be directed to:

Wanda Wallis, Program Analyst  
ScholarShare Investment Board  
915 Capitol Mall, Suite 219  
Sacramento, CA 95814  
Telephone—(916) 651-8826  
Fax—(916) 651-6382  
E-mail—[wwallis@treasurer.ca.gov](mailto:wwallis@treasurer.ca.gov)

#### AUTHORITY AND REFERENCE

Education Code Section 69981(d) authorizes the Board to adopt regulations it deems necessary to implement the Golden State ScholarShare Trust Act. The Board proposes changes to the regulations in order to implement, interpret and make specific Sections 69980, 69981, 69982, 69983, 69985, 69986, 69989, 69990, 69993.5 and 69994 of the Education Code, Sections 3914 and 3990-3925 of the Probate Code, Section 24306 of the Revenue and Taxation Code, and Sections 117, 152, 501(c)(3) and 529 of the Internal Revenue Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The ScholarShare Investment Board is statutorily charged with administering the Golden State ScholarShare College Savings Program. The ScholarShare program is a qualified tuition program as defined in Section 529 of the Internal Revenue Code (IRC). The program began accepting deposits in October 1999 from individuals who wanted to save money to pay the qualified higher education expenses of a designated beneficiary. The Board approved regulations necessary for the effective administration of the program at that time.

On September 9, 2002, Assembly Bill 3045 was signed into law as an urgency statute, making a variety of technical and federal conforming changes to the ScholarShare program. Prior to the passage of AB 3045, Education Code Section 69983(g) required the Board to collect a fine from account holders who

closed their accounts and used the funds for purposes other than educational expenses. Federal and State laws have now been changed and instead of individual states collecting these penalties the Internal Revenue Service will collect them in the form of a tax. At its December 16, 2002 meeting, the Board voted to approve regulations to remove the payment penalty requirement. Administrative terms are also being clarified in order to more appropriately define their meaning and to conform to the Federal Patriot Act of October 2001.

1. Education Code Section 69980, Internal Revenue Code Section 529, and the California Code of Regulations Section 30950 define certain terms used in the administration of qualified tuition programs. The existing regulations define the term "cash" as checks, money orders, cashier's checks, rollover distributions, payroll deduction, automatic contribution plan, and electronic funds transfers. The proposed regulatory action revises the definition of the term "cash" and removes the option of accepting money orders or cashier's checks as a method of payment of investment funds.
2. Existing regulations specify in Section 30953(a) that a cancellation penalty of one percent of the portion of an account owner's distribution constituting earnings shall be imposed upon cancellation of a participation agreement between an account owner and the ScholarShare Trust. The proposed regulatory action deletes the penalty requirement in order to conform to the provisions of AB 3045.
3. The term "maximum contribution limit" referenced in Sections 30953(c) and 30958(a) and (d) of the existing regulations is being changed to "maximum account balance limit" to more clearly define the term as it relates to other documents and materials within the program.
4. Subsections of existing regulations in Section 30953 are re-lettered for clarity.
5. Existing regulations in Section 30954(d) require the Board to pay an amount of a requested distribution to an account owner, minus the amount of the payment penalty required in paragraph (a) of Section 30953. Since the payment penalty provision has been deleted, the proposed regulatory action removes the stipulation pertaining to the payment penalty because it is no longer applicable.
6. Existing regulations establish in Section 30959(d) that the State of California would not be subject to the one percent penalty provision set forth in Section 30953(a) when it opens a qualified scholarship account for a beneficiary. With the removal of the payment penalty provision in Section 30953(a), Section 30959(d) is no longer necessary and is being deleted.

7. Subsections of existing regulations in Section 30959 are re-lettered for clarity.

#### DISCLOSURES REGARDING PROPOSED ACTION

The Board has made the following determinations:

- Mandate on local agencies and school districts: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None
- Other non-discretionary costs or savings imposed on local agencies: None.
- Cost or savings to any state agency: None.
- Cost or savings in federal funding to the state: None.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Board has initially determined that the proposed regulations will not have such an impact.
- Cost impacts on a representative private person or business: The Board is not aware of any costs impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None.
- Impact on Jobs/New Businesses: the Board has determined that this regulatory proposal will not have significant impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

#### SMALL BUSINESS DETERMINATION

The Board has determined that these proposed regulations do not affect small business. The proposed regulations identify no actions required of or referencing small business.

#### CONSIDERATION OF REASONABLE ALTERNATIVES

In accordance with Government Code Section 11346.5, Subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

#### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be addressed to:

Wanda Wallis, Program Analyst  
ScholarShare Investment Board  
915 Capitol Mall, Suite 219  
Sacramento, CA 95814  
Telephone—(916) 651-8826  
Fax—(916) 651-6382  
E-mail—[wwallis@treasurer.ca.gov](mailto:wwallis@treasurer.ca.gov)

The following person is designated as a backup contact person:

Jennifer DuCray-Morrill, Acting Executive Director  
ScholarShare Investment Board  
Telephone—(916) 653-3354

Questions on the substance of the proposed regulations may be directed to either Ms. Wallis or Ms. DuCray-Morrill.

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based, to Ms. Wallis at the above address.

#### AVAILABILITY OF THE STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address during normal business hours. The file may also be accessed on the website indicated in this Notice. As of the date this Notice is published in the Notice Register, the rulemaking file includes this Notice, the proposed text of the regulations, and the Initial Statement of Reasons.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the forty-five (45) day written comment period and following a public hearing, if a public hearing is requested, and after considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice without further written notice.

If the Board makes modifications which are sufficiently related to the originally proposed text of the regulations, copies of the revised text will be made available to the public for a period of at least fifteen (15) days before the Board adopts the regulations as revised. Requests for copies of any changed or modified regulations may be obtained by contacting Wanda Wallis, at the above address. The Board's website may also be accessed at [www.treasurer.ca.gov/scholarshare](http://www.treasurer.ca.gov/scholarshare). The Board will

accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting Wanda Wallis at the above address or website.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations in underline and strike-out, may be accessed through our website at [www.treasurer.ca.gov/scholarshare](http://www.treasurer.ca.gov/scholarshare).

### **TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

#### NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

**PUBLIC MEETING:** On **April 17, 2003** at 10:00 a.m. in the Auditorium of the State Resources Building, 1416 Ninth Street, Sacramento, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

**PUBLIC HEARING:** On **April 17, 2003** following the Public Meeting in the Auditorium of the State Resources Building, 1416 Ninth Street, Sacramento, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes noticed below to occupational safety and health regulations in Title 8 of the California Code of Regulations.

**BUSINESS MEETING:** On **April 17, 2003** following the Public Hearing in the Auditorium of the State Resources Building, 1416 Ninth Street, Sacramento, California.

At the Business Meeting, the Board will conduct its monthly business.

The meeting facilities and restrooms are accessible to the physically disabled. Requests for accommodations for the disabled (assistive listening device, sign language interpreters, etc.) should be made to the Board office no later than 10 working days prior to the day of the meeting. If Paratransit services are needed, please contact the Paratransit office nearest you.

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Occupational Safety and Health Standards Board Administrative Regulations and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on April 17, 2003.

1. **TITLE 8: OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD ADMINISTRATIVE REGULATIONS**

Chapter 3.5, Subchapter 1, Article 4  
Sections 421, 422, 422.1, 423, 424.1–424.5, 425.1, 425.2, 426, 427.1–427.4 and 428

**Hearings and Decisions Regarding Variances from Occupational Safety and Health Standards**

2. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**

Chapter 4, Subchapter 7, Article 13  
Section 3437 and New Section 3458  
**Fall Protection for Date Palm Operations**

A description of the proposed changes are as follows:

1. **TITLE 8: OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD ADMINISTRATIVE REGULATIONS**

Chapter 3.5, Subchapter 1, Article 4  
Sections 421, 422, 422.1, 423, 424.1–424.5, 425.1, 425.2, 426, 427.1–427.4 and 428

**Hearings and Decisions Regarding Variances from Occupational Safety and Health Standards**

#### INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Pursuant to Labor Code Section 142.3, the Board has adopted a number of administrative regulations



that govern hearings and decisions pertaining to variances from occupational safety and health standards and appeals of temporary variance decisions. The Board has determined that some of these regulations require clarification or deletion and that additional regulatory provisions are needed. The Board, therefore, proposes to make the following amendments to the administrative regulations:

- Clarify where variance hearings will be held and add a provision allowing for videoconference hearings;
- Clarify the regulations pertaining to the issuance and service of subpoenas duces tecum;
- Delete the provisions pertaining to the submission of affidavits into evidence;
- Provide for the handling of confidential evidence;
- Clarify provisions pertaining to the use of interpreters during variance hearings;
- Clarify the provisions pertaining to taking official notice of evidentiary matters;
- Clarify the provisions pertaining to hearing continuances;
- Clarify the provisions pertaining to hearing attendance and representation at hearings;
- Revise and clarify the provisions related to excluding witnesses from the variance hearing room;
- Eliminate the provisions pertaining to oral arguments and briefs;
- Revise the standards pertaining to witness fees;
- Add a provision allowing the Board to reinstate a proceeding if an employer fails to appear at a variance hearing;
- Revise the regulations pertaining to issuing decisions and actions on proposed decisions;
- Add to and revise the provisions pertaining to petitions for re-hearing;
- Add a section pertaining to employer-initiated modifications to a permanent variance.

Moreover, this proposed rulemaking action contains non-substantive, editorial and grammatical revisions. These non-substantive revisions are not all discussed in this Informative Digest, but they are clearly indicated in the regulatory text in underline and strikeout format. In addition to these non-substantive revisions, the following actions are proposed:

#### Section 421. Time and Place of Hearing.

Section 421 states that the Standards Board may hold a variance hearing at its principal office or at a location as near as possible to the place of employment involved in the variance request. The section further states that, when it is not practicable to have all the

parties and their witnesses in one location for a hearing, the Board may hold separate hearings for each party.

An amendment is proposed which permits the Board to hold a variance hearing at its principal office or at a location designated by the Board that is more convenient for the employer. In addition, instead of providing for separate hearings when the parties are unable to gather in one location, the proposal would provide for the use of videoconference hearings. These changes will conform the regulation to the Board's current practices and will allow the Board to better accommodate the needs of employers.

#### Section 422. Witnesses and Subpoenas.

Section 422 specifies the requirements for witnesses and subpoenas. It allows parties to seek a subpoena duces tecum and specifies the requirements for obtaining one, but is silent with respect to how such subpoenas are issued. A proposed amendment would clarify that the Board will issue a subpoena if the affidavit required to obtain the subpoena is complete and if it supports the application for the subpoena. A second amendment is proposed to clarify that the party seeking the subpoena duces tecum is responsible for serving it. These amendments will have no effect on the regulated public other than to clarify the procedures pertaining to subpoenas duces tecum.

#### Section 422.1. Evidence by Affidavit.

Section 422.1 provides for the submission of evidence by affidavit. An amendment is proposed to repeal this provision, because the regulation imposes a level of legal formality on the variance process that the Board does not observe. Moreover, Section 424 specifies evidentiary rules sufficient to safeguard against the concerns that Section 422.1 is intended to address. The proposed amendment will have no effect on the regulated public, because employers do not seek to submit evidence by affidavit in the manner addressed by this regulation.

In lieu of existing Section 422.1, the Board proposes to insert a regulation to address the handling of confidential information. Parties, at times, submit information with their variance applications that they wish to keep confidential. The proposed regulation acknowledges this and specifies that the Board will treat information defined in Civil Code Section 3426.1 as confidential information and will, to the extent it is able, take appropriate steps to maintain its confidentiality. Consequently, the title of Section 422.1 is proposed for revision to read "Confidential Evidence." The effect of this modification will be to clarify the Board's practices with respect to confidential information.

**Section 423. Conduct of Hearing.**

Section 423 addresses the use of interpreters during variance proceedings. The Board proposes to add provisions clarifying that the Board provides notice of the right to an interpreter in the notice of hearing and to specify that language assistance will be provided if requested at least ten days prior to the hearing. The Board proposes to add a provision stating that the interpreter, whether provided by the Board or by the party requiring the interpreter, may not have any prior involvement in the matter being heard. Also, the Board proposes to clarify that the determination regarding who shall pay for the interpreter shall be made consistent with Government Code Section 11435.25(b), which governs the payment of costs associated with providing interpreters. These modifications will have the effect of clarifying the Board's practices with respect to the use of interpreters.

**Section 424.1. Official and Judicial Notice.**

Section 424.1 states the bases on which the Board will take judicial or official notice of certain matters and it specifies the parties' right to present information relevant to the propriety of taking such notice and on the tenor of the matters to be noticed. The Board proposes to editorially revise these provisions to clarify them and to remove references to "judicial notice," because the Board does not have judicial officers.

Consequently, the Board proposes to remove "and Judicial" from the title of Section 424.1. These changes will have no effect on the regulated public.

**Section 424.2. Continuance of Hearings and Further Hearings.**

Section 424.2 addresses continuances of hearings and the holding of further hearings. The section states that the Board, on its own motion, may order further hearing or a hearing continuance and it allows parties, upon a showing of good cause, to request a continuance. The regulation states, however, that requests for continuances by parties are disfavored, because parties are expected to submit all matters in controversy at a single hearing.

Amendments are proposed to clarify the intent of this section, to delete non-regulatory language and to better organize its contents. In addition, a provision that allows notice of a continued hearing to be given orally at a hearing is proposed for deletion, because the Board's practice is to issue such notices in writing. The proposed amendments are for clarification purposes and will have no effect on the regulated public.

**Section 424.3. Representation at Hearing.**

Section 424.3 explains that employers may appear at variance hearings in person or through a representative. The regulation further specifies that the

representative need not be an attorney and it specifies that affected employees who are represented by an authorized employee representative may appear through that representative. The regulation also states that a representative may be withdrawn by filing a written notice of withdrawal and by serving a copy of the notice on all parties.

A revision is proposed to add a statement requiring that an employer attend the hearing, in person or through a representative. This change will have the effect of clarifying that attendance at a hearing is mandatory even though there are options regarding how to attend. Additional changes are proposed to delete non-regulatory and unnecessary language in the regulation. It is also proposed to require that notice to withdraw a representative be submitted to the Board in lieu of requiring that it be served on all parties. The Board is better equipped to ensure that documents reach all interested parties, so it has assumed responsibility for serving these documents. The proposed amendments will clarify the regulation and will better reflect the Board's current practices.

**Section 424.4. Exclusion of Witnesses.**

Section 424.4 allows the parties to a variance to file motions to exclude witnesses from a variance hearing, but specifies that a party or its representative cannot be excluded. The standard further states that the Division of Occupational Safety and Health may have both counsel and an officer or employee present in the room at all times. A revision is proposed which will require parties to show good cause to exclude a witness in lieu of simply requiring that they file a motion. The effect of this change will be to ensure that witnesses are excluded from variance proceedings only when there is a good reason to do so.

In addition, a revision is proposed which will permit both a party spokesperson and the party's representative to be present in the proceedings at all times instead of just allowing the Division to have both a representative and a spokesperson present. The Board believes that all parties to the variance should be treated similarly and that a party should be entitled to have a spokesperson and a representative present at all times. The Board recognizes that representatives often lack the breadth of knowledge that party spokespeople may possess and believes it is beneficial to the process to ensure that the people with the greatest knowledge about the variance be present at all times. The effect of this change will be to ensure that a variance hearing is as efficient and effective as possible.

**Section 424.5. Oral Arguments and Briefs.**

Section 424.5 allows the parties to request the opportunity to present oral argument and written briefs and states that the Board shall grant the requests. The Board proposes to delete this provision, because it

suggests a degree of legal formality that the Board does not observe in the variance process. The Board routinely provides the opportunity for oral presentations at variance hearings and it permits employers to submit written information prior to and during the variance hearing in accordance with Section 423. The Board, however, rarely receives briefs and does not entertain any written submissions after the hearing is closed. Because the Board believes that Sections 423 and 424 adequately state the parties' rights with respect to submitting written and oral information, it believes that this section is duplicative and misrepresents the Board's practices. This change will have the effect of deleting duplicative regulations and of clarifying the Board's regulatory practices.

#### Section 425.1. Witness Fees.

Section 425.1 states that witnesses subpoenaed to a variance hearing are entitled to the fees and mileage provided for in Government Code Section 68093 if a written demand is filed with the hearing officer not later than 10 days after the date on which the witness appeared at the hearing.

The Board proposes to require fees and mileage to be paid as set forth in Government Code Section 11450.40 as well as Section 68093. Section 11450.40 states that witnesses subpoenaed to administrative hearings are entitled to the same mileage and fees afforded witnesses in civil cases. Section 68093 specifies the witness fees and mileage provided for in civil cases. Section 11450.40 further states that the party who subpoenas the witness must pay the fee. Although the Board is not bound by Government Code Section 11450.40, it believes witnesses who are subpoenaed should be compensated for their time and believes that the procedure and formula specified in Section 11450.40 are the appropriate standards to follow. Accordingly, the Board proposes to delete the requirement that a written demand be filed with the hearing officer within 10 days of the appearance. The effect of these changes will be to clarify that a party who subpoenas a witness is responsible for ensuring that witness fees and mileage are paid.

#### Section 425.2. Default.

Section 425.2 states the actions that the Board may take if a party fails to appear at a variance hearing. The Board proposes to add a subsection that would allow the Board to reinstate a proceeding, at its discretion, if an employer fails to appear at a hearing, but submits to the Board a reasonable, written explanation for the failure to appear within ten days after the notification of intent to dismiss is served. It is also proposed to revise the section title to read, "Failure to Appear."

The effect of these proposed revisions will be to provide employers with an opportunity to preserve their variances despite their failure to attend the hearing.

#### Section 426. Decision; Action on Proposed Decision.

Section 426 explains: 1) which entities may hear a variance; 2) how a proposed decision should be drafted; 3) how the Board may respond to a proposed decision; and 4) the Board's right to decide a case itself. This section contains a variety of duplicative provisions and much of the contents are unclear. A number of non-substantive editorial changes are proposed to clarify the regulatory intent and to conform the regulation to the Board's practices.

In subsection (a), it is proposed to delete the requirement that the hearing officer "who presided at the hearing" be present during the Board's consideration of the application or appeal and, if requested, assist and advise the Board. Instead, the section will require only that the hearing officer, if requested, assist and advise the Board. This proposed modification recognizes that the hearing officer who initially heard the matter may leave the position and may be unable to fulfill this function. The new hearing officer might be in a position to assist the Board, but would be unable to do so under the existing language. This change will have the effect of allowing the Board's hearing officer to assist it to the greatest extent possible.

In proposed subsection (c) (existing subsection (d)), the Board proposes to remove the reference to a transcript, because the Board does not prepare transcripts of variance hearings. In addition, the Board proposes to delete the requirement to refer the case to "the same" hearing officer or hearing panel to take additional evidence, if it does not adopt the proposed decision. While the Board would always strive to re-assign a matter to the same hearing panel and hearing officer that originally heard the variance, that may not always be possible because of potential changes in staff and Board composition. By removing the requirement to assign follow-up hearings to the same hearing officer and panel, the Board will be able to gather the information necessary to resolve a variance. This change will have no effect on the regulated public.

#### Section 427. Petitions for Re-Hearing.

Section 427 states the time parameters and bases for filing a petition for re-hearing. The Board proposes to add a provision to the regulation clarifying that failure to file the petition within the time specified constitutes sufficient grounds to deny the petition. This change will have no effect on the regulated public other than to clarify the regulatory intent.



Section 427.1. Form of Petition for Re-Hearing.

Section 427.1 explains the required contents for a petition for re-hearing. The Board proposes to add a provision explaining that the petition will be denied if the petitioner fails to provide the information required. This change will have no effect on the regulated public other than to clarify the regulatory intent.

Section 427.2. Proof of Service for Petition for Re-Hearing.

Section 427.2 states that the party petitioning for re-hearing must serve the petition on all parties. The section also explains that failure to do so constitutes grounds for denying the petition. The Board proposes to rename this section to: "Service of Petition for Re-Hearing" for clarity purposes and to change this section to state that the Board will assume responsibility for serving the petition on all parties as opposed to requiring the petitioner to do so. It is the Board's practice to serve all documents it receives on all interested parties in order to ensure that the documents are properly disseminated. It would be duplicative to require the petitioner to do the same. This change will relieve the petitioner of the duty to serve the petition for re-hearing on all interested parties.

Section 427.3. Re-Hearing.

Section 427.3 states that, if a re-hearing is granted, the Board may re-hear the case or refer it to a hearing officer. The Board proposes to expand this section to state all the ways in which the Board may respond to a petition for re-hearing. The proposal states that, when a petition is filed in a timely manner, the Board may grant the petition, affirm the Board's initial decision, take no action, in which case the petition would be deemed denied after 30 days, or deny the petition and provide its reasons for doing so. It is proposed to add a provision explaining that, if the Board opted to deny the petition by taking no action, the Board would nonetheless notify the employer of the denial.

Also, it is proposed to add a requirement allowing the Board to refer the petition to a hearing panel. Currently, the regulation only provides for referral to a hearing officer. Revisions will clarify that the re-hearing may be made on the existing record, or that additional evidence may be requested. A new provision will state that a notice of hearing will be issued if additional hearing time is needed to resolve the matter. Under those circumstances, the provision will also require employers to comply with the employee notification requirements contained in Section 411.2(a)(3) and (b)(3). Another new provision will state that, if the Board decides to hear a matter on the existing record, it may do so without notice and without affording the parties further opportunity to

submit information. The proposed revisions will have no effect on the regulated public other than to clarify the regulatory intent and the Board's practices with respect to petitions for re-hearing.

Section 427.4. Decision on Petition for Re-Hearing.

Section 427.4 states that a decision issued on a re-hearing petition shall be in the same manner and form as prescribed in rule 426.1 and it states that the petition will be deemed denied if the board takes no action on the petition within thirty (30) days. The Board proposes to move the statement indicating that inaction by the Board for 30 days constitutes a denial of the petition by the Board to Section 427.3 and to make editorial revisions to the remainder of the provision. These modifications will clarify the regulatory requirements and organize them in a more logical fashion.

Section 428. Method of Publication.

Former Section 428, "Method of Publication", was repealed during a previous rulemaking action. New Section 428, entitled "Modifications to a Permanent Variance", is proposed to address situations in which an employer seeks to modify a permanent variance. Labor Code Section 143(d) allows employers, the Board, the Division of Occupational Safety and Health and employees to seek variance modifications. Although employers regularly seek to modify variances, the Board does not currently have any regulations to address this topic. Because the Board, the Division and employees have yet to seek any variance modifications, the Board believes that regulations to address such actions are unnecessary at this time. The effect of this new section will be to specify when an employer must seek to modify a variance and how to do so.

**COST ESTIMATES OF PROPOSED ACTION**

Costs or Savings to State Agencies: No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs: The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses: The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.



Costs or Savings in Federal Funding to the State:  
The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed: No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies: This proposal does not impose non-discretionary costs or savings on local agencies.

#### DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one that carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Moreover, these proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standards.

#### EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

#### ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

#### REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A description of the proposed changes are as follows:

2. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS  
Chapter 4, Subchapter 7, Article 13  
Section 3437 and New Section 3458  
**Fall Protection for Date Palm Operations**

#### INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking action was initiated at the request of the Division of Occupational Safety and Health (Division). The Division submitted a letter to the Occupational Safety and Health Standards Board (Board), dated November 17, 2000, outlining the need to develop specific regulations to address fall protection for workers involved in growing and harvesting dates. With the assistance of an advisory committee, this rulemaking action develops a new proposed Section 3458 in the GISO to address fall protection specific to date palm operations.

#### Section 3437. Definitions.

GISO Section 3437 provides the definitions related to Article 13, Agricultural Operations. The word “frond” is used in the language of proposed Section 3458 and is proposed to be added to the definitions contained in Section 3437. The proposed revision will have the effect of providing clarity to the requirements proposed in Section 3458 regarding fall protection for date palm operations.

#### Proposed New Section 3458. Fall Protection for Date Palm Operations.

Section 3458 is proposed to address the use of fall protection for workers that must access date palms for activities such as thinning, dethorning, pollinating, tying, bagging and harvesting of the date palm fruit.

#### Subsection (a)

Proposed subsection (a) requires that employees working in or on date palm trees be protected from falling at heights greater than 7½ feet by the use of approved elevating work platforms, aerial devices or by the use of approved personal fall arrest, fall restraint or work positioning systems meeting the requirements of Section 1670 of the Construction

Safety Orders. The proposed subsection will have the effect of ensuring workers are protected from falling at heights greater than 7½ feet.

#### Subsection (b)

Proposed subsection (b) provides that lanyards used in a fall protection system be constructed of wire rope or chain when there is a hazard of cutting or damaging the lanyard. Proposed subsection (b)(1) requires that wire rope lanyards meet the minimum strength requirements contained in Section 1670 of the Construction Safety Orders (CSO). CSO Section 1670 outlines the strength requirements for fall protection system components and devices such as lanyards, lifelines, and anchor points. Proposed subsection (b)(2) requires that chains used in a fall protection system maintain a safety factor of at least 10. A note in subsection (b)(2) defines the term “safety factor”. Proposed subsection (b) will have the effect of ensuring that effective and appropriate fall protection equipment and devices are used when work must be completed at hazardous heights in date palms.

#### Subsection (c)

Proposed subsection (c) addresses the use of date palm saddles, which are part of a custom-built positioning device system used for work that is performed primarily below the crown of the date palm tree. Subsection (c) requires that a competent person design the date palm saddle and that the saddle be used in accordance with subsections (c)(1)–(c)(3). Subsections (c)(1), (c)(2), and (c)(3) require that date palm saddles incorporate the use of an approved body belt; that lanyards be attached to at least two fronds; and that dead, decayed, or damaged fronds shall not be used for anchorage. Subsection (c) will have the effect of ensuring that date palm saddles provide appropriate fall protection when used as part of a positioning device system and that the system is appropriately and substantially anchored.

#### Subsection (d)

Proposed subsection (d) addresses the use of positioning device systems used in the crown of date palm trees and requires that these positioning device systems meet the provisions of subsections (d)(1)–(4). Subsection (d)(1) requires that lanyards be attached to at least two fronds. Subsection (d)(2) limits lanyards to a maximum length of 8 feet and requires that lanyards be rigged in such a manner that an employee cannot fall more than two feet. The maximum lanyard length of 8 feet is necessary to provide sufficient lanyard length to wrap around the date palm trunk and fronds when a single lanyard system is used as part of a positioning device attached to a D-ring and body belt. Subsection (d)(3) prohibits the use of dead, decayed, or damaged fronds for anchorage. Two lanyard

positioning device systems are also used in the crown of date palms with lanyards approximately up to 5 feet in length attached to a D-ring and body belt. Subsection (d)(4) requires that when changing work positions, at least one lanyard remains attached to provide fall protection at all times. The proposed section will have the effect of ensuring that effective means and methods of fall protection are provided for employees working in the crown of date palm trees.

#### Subsection (e)

Proposed subsection (e) requires a job briefing to be conducted before each work assignment begins. The effect of this provision will be to ensure that employees are made aware of the hazards unique to a specific assignment, including the work procedures necessary to ensure that the work is completed safely.

#### Subsection (f)

Proposed subsection (f) provides that prior to each use, a qualified person shall inspect fall protection equipment and any found to be defective shall be immediately removed from service. The regulation will have the effect of ensuring fall protection equipment is frequently inspected and in good operating condition in order to provide effective fall protection.

### **COST ESTIMATES OF PROPOSED ACTION**

Costs or Savings to State Agencies: No costs or savings to state agencies will result as a consequence of the proposed action. The date palm industry is unique and limited to cultivation in desert-like areas of Southern California and the California/Arizona border. There are no state agencies involved in the cultivation of dates.

Impact on Housing Costs: The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses: The Board has made an initial determination that this proposal will not result in a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State: The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed: No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Saving Imposed on Local Agencies: This proposal does not impose nondiscretionary costs or savings on local agencies.

#### DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, these regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standards.

#### EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

#### ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

#### REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The above proposals do not contain building standards as defined by Health and Safety Code Section 18909.

A copy of the proposed changes in STRIKEOUT/ UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than April 11, 2003. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on April 17, 2003 will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at [oshsb@hq.dir.ca.gov](mailto:oshsb@hq.dir.ca.gov). The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.



Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to John D. MacLeod, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

## **TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING**

### **NOTICE OF PROPOSED REGULATORY ACTION**

#### **AMENDMENT OF NOTICE OF APPOINTMENT TERMINATION FORM 2-114 AND COMMISSION REGULATION 1003**

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST), pursuant to the authority vested by Penal Code Sections 13503 (powers of the Commission on POST), 13506 (authority for the Commission on POST to adopt regulations), and in order to interpret, implement and make specific Sections 13510 of the Penal Code (authority for the Commission on POST to adopt and amend rules establishing minimum standards for California law enforcement officers), proposes to adopt, amend, or repeal regulations in Chapter 2 of Title 11 of the California Code of Regulations.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Currently, Commission Regulation 1003 requires that whenever a peace officer of a participating department is newly appointed, promoted to a first-level supervisory, middle management or executive position, demoted, terminates, changes his/her name, or changes appointment status within the same department, the department shall notify the Commission within 30 days of such action on the "Notice of Appointment/Termination" form 2-114.

On January 16, 2003 the Commission accepted, pending Office of Administrative Law approval, amendments to the Notice of Appointment Termination Form 2-114. POST is proposing to 1) amend the privacy notice to reflect that the Notice of Appointment Termination information is confidential and shall only be released to the subject of the record, the subject's employer, or in accordance with Evidence Code 1043, 2) expand the attestation to serve as documentation to POST that the appointment being

noticed has been completed in accordance with statutes and Commission regulations. The statement will also serve as a reminder to department heads/authorized designees that selection requirements shall be completed on or prior to the date of appointment for a peace officer, reserve peace officer or dispatcher, and 3) specific rank identifiers were added for deputies appointed pursuant to PC 830.1(c) and for coroner classifications. This will assist POST and agencies in determining compliance with statutes and POST regulations. Compliance analysis reports for custodial deputies will also report more accurately.

### **PUBLIC COMMENT**

The Commission hereby requests written comments on the proposed action. All written comments must be received at POST no later than April 14, 2003. Written comments should be directed to Kenneth J. O'Brien, Executive Director, Commission on Peace Officer Standards and Training, 1601 Alhambra Boulevard, Sacramento, CA. 95816-7083, fax number (916) 227-2801, or e-mail at [kobrien@post.ca.gov](mailto:kobrien@post.ca.gov).

A public hearing is not scheduled. Pursuant to Government Code Section 11346.8 any interested person, or his or her duly authorized representative, may request in writing, no later than 15 days prior to the close of the public comment period, that a public hearing be held.

### **ADOPTION OF PROPOSED REGULATIONS**

Following the close of the public comment period, the Commission may adopt the proposals substantially as described in this notice or may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before adoption, the text of any modified language clearly indicated will be made available at least 15 days before the date of adoption to all persons whose comments were received by POST during the public comment period, and all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated on this notice. The Commission will accept written comments on the modified text for 15 days after the date on which the revised text is made available.

### **TEXT OF PROPOSAL**

Copies of the Initial Statement of Reasons and exact language of the proposed action may be obtained by submitting a request in writing to the contact person at the address listed at the end of this notice. This address is the location of all information considered as the basis for these proposals (rulemaking file). The



information will be maintained for inspection during the Commission's normal business hours (8 a.m. to 5 p.m., Monday through Friday).

Copies of the Final Statement of Reasons, once it has been prepared pursuant to subdivision (a) of Section 11346.9, may be obtained at the address noted at the end of this notice.

#### ESTIMATE OF ECONOMIC IMPACT

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency for which Government Code Section 17561 Requires Reimbursement: None

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states, and has found that the proposed amendment of Commission Regulation 1003 will have no effect on California businesses, including small businesses, because the Commission on Peace Officer Standards and Training sets selection and training standards for law enforcement and does not impact California businesses, including small businesses.

Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action.

Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no effect on housing costs.

#### ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the state of California, nor result in the elimination of existing businesses or create or expand businesses in the state of California.

#### CONSIDERATION OF ALTERNATIVES

In order to take this action the Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for

which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

#### CONTACT PERSON

Inquiries concerning written material pertaining to the proposed action should be directed to Leah Cherry, Associate Governmental Program Analyst, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, or by telephone at (916) 227-3891, fax number (916) 227-3895 or e-mail at [leah.cherry@post.ca.gov](mailto:leah.cherry@post.ca.gov). The back-up contact person as well as inquiries concerning the substance of the proposed action/text should be directed to Steve Chaney, Senior Consultant, at (916) 227-4072, fax number (916) 227-4823 or e-mail at [schaney@post.ca.gov](mailto:schaney@post.ca.gov).

#### INTERNET ACCESS

The Commission has posted on its Internet website ([www.post.ca.gov](http://www.post.ca.gov)) the information regarding this proposed regulatory action. Select "Regulation Notices" from the topics listed on the website's home page.

### TITLE MPP. DEPARTMENT OF SOCIAL SERVICES

ITEM # 1 Definition of Entry Date for the Cash Assistance Program for Immigrants  
ORD #1202-29

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held April 16, 2003, as follows:

April 16, 2003

Office Building # 9

744 P St. Auditorium

Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on April 16, 2003.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

#### **CONTACT**

Anthony J. Velasquez, Chief  
Office of Regulations Development  
California Department of Social Services  
744 P Street, MS 7-192  
Sacramento, California 95814  
TELEPHONE: (916) 657-2586  
FACSIMILE: (916) 654-3286  
E-MAIL: [ord@dss.ca.gov](mailto:ord@dss.ca.gov)

#### **CHAPTERS**

Manual of Policies and Procedures Chapter 49-000  
(Cash Assistance Program for Immigrants), Section  
49-020 (Immigration Status)

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

These proposed regulations adopt new language in Manual of Policies and Procedures Section 49-020, which sets eligibility criteria for the Cash Assistance Program for Immigrants (CAPI) based, in part, on the date the non-citizen "entered the United States." Under the provisions of Welfare and Institutions Code Sections 18938 and 18940, there are two components to CAPI which are often referred to as basic CAPI and extended CAPI. A person who entered the United States on or after August 22, 1996 is only eligible for basic CAPI if he or she is sponsored and that sponsor is deceased or disabled, or the non-citizen is a victim of abuse by the sponsor or the sponsor's spouse. A person who entered the United States on or after

August 22, 1996 who does not meet the sponsor restrictions for basic CAPI can be eligible for extended CAPI, but is subject to a 10-year sponsor-deeming period. Sponsor deeming may reduce a person's CAPI benefit or make him or her ineligible for CAPI. A person with an entry date prior to August 22, 1996 does not have to meet the sponsor restrictions of basic CAPI and may be subject to only a three-year sponsor-deeming period.

There are currently no regulations that define the terms "entry date" or "entered the United States" for purposes of establishing eligibility for CAPI. The term is not defined in the statutes (Welfare and Institutions Code Sections 18938 and 18940) that are the basis for these regulations. The specific eligibility criteria cited above are unique to CAPI and are not specifically found in federal regulations. In fact, federal regulations reflect different definitions of "entry date" for different purposes.

Determining a non-citizen's entry date into the United States is a critical factor in determining CAPI eligibility and/or the amount of the CAPI benefit. The proposed regulations will clarify the meaning of entry date for the purpose of CAPI eligibility, which is needed by the counties to administer the program properly and accurately. The proposed regulations will also end confusion over this issue for potential applicants. The proposed regulations reflect current departmental policy on this issue. That policy has been in effect for over two years, and has recently been incorporated in a precedential decision approved by the Director of CDSS on September 5, 2002.

#### **COST ESTIMATE**

1. Costs or Savings to State Agencies: None.
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: None.

#### **LOCAL MANDATE STATEMENT**

These regulations do not impose a mandate upon county welfare departments because they simply clarify existing regulations and reflect existing departmental policy.

#### **STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS**

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT  
ON PRIVATE PERSONS OR BUSINESSES

CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

ASSESSMENT OF JOB CREATION  
OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Welfare and Institutions Code Sections 10553, 10554, and 18943. Subject regulations implement and make specific Welfare and Institutions Code Sections 18938, 18940 and 18944 and CDSS' Director's Designation as Precedential Decision dated September 5, 2002.

CDSS REPRESENTATIVE REGARDING  
RULEMAKING PROCESS OF THE  
PROPOSED REGULATION

Contact Person: Anthony J. Velasquez  
(916) 657-2586

Backup: Robin Garvey  
(916) 657-2586

EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. In order to allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at public hearing in accordance with Government Code Section 11346.4.

AGENDA ITEM(S) FOR THIS PUBLIC HEARING  
April 16, 2003

ITEM #1 ORD #1202-29

Definition of Entry Date for the Cash  
Assistance Program for Immigrants

**RULEMAKING PETITION  
DECISIONS**

**BOARD OF PRISON TERMS**

NOTICE OF DECISIONS ON PETITIONS TO  
AMEND REGULATIONS

Title 15, Crime Prevention and Corrections  
Division 2, Board of Prison Terms

PETITIONERS

Mr. David T. Samuel's petition was received on January 13, 2003. Sharon Samuel, his wife, submitted a virtually identical petition; it was received on January 21, 2003. Mr. Samuel submitted additional arguments and case citations concerning the same petition for regulations on January 31, 2003.

AUTHORITY

Under authority established in Penal Code (PC) Sections (§) 3041, 3052 and 5076.2, the Board of Prison Terms (Board) may prescribe and amend regulations for the administration of parole.

CONTACT PERSON

Please direct any inquiries regarding this action to Lori Manieri, Regulations Coordinator, Board of Prison Terms, by mail at 1515 "K" Street, Sixth Floor, Sacramento, CA 95814, by telephone at (916) 445-5277, by telefax at (916) 322-3475, or by E-mail to: "regcomment@bpt.ca.gov".

AVAILABILITY OF PETITIONS

The petitions for amendment of the regulation are available upon request directed to the Board's contact person.

SUMMARY OF PETITIONS

**The three petitions each request that the Board of Prison Terms amend the California Code of Regulations (CCR), Title 15, Sections (§§) 2280, 2281(a) and 2281(b) to include consideration of the amount of time served and the post-conviction credits a prisoner has vested when determining whether a life prisoner is suitable for release on parole. First, the petitions allege that this change is necessary to**

harmonize with Penal Code (PC) § 3041(c) and allege that application of those regulations to prisoners sentenced under the Indeterminate Sentencing Law (ISL), and who committed crimes prior to November 8, 1978, violates the Ex Post Facto Clause of the Constitution (ex post facto)<sup>1</sup>. Second, the petitions allege that California's parole scheme creates a liberty interest in parole release.

The petitions also request other relief beyond the scope of the petition process, viz., Mr. Samuels requests that the Board expedite the administrative appeal he currently has pending with the Board; and Mrs. Samuels requests that the Board request a formal opinion from the Attorney General<sup>2</sup> construing Penal Code § 3041(c).

### BOARD DECISIONS

The Board of Prison Terms denies all of the petitions to amend 15 CCR §§ 2280, 2281(a) and 2281(b). The Board of Prison Terms (Board or BPT) considers the two "Notice[s] of Petition to Amend Regulation" and the January 31, 2003 letter as each constituting a Petition for Adoption or Repeal of Regulations under Government Code (GC) § 11340.6.<sup>3</sup>

Since the only remedy that petitions under GC § 11340.6 can obtain is a regulatory change or a hearing to consider a regulatory change, the Board denies all the other relief requested by Mr. and Mrs. Samuels, i.e. concerning administrative appeals, and an opinion from the Attorney General.

### THE BOARD DENIES YOUR PETITIONS FOR THE FOLLOWING REASONS

GC § 11340.6 requires that petitions state the following clearly and concisely: (a) the substance or nature of the regulation amendment, or repeal requested; (b) the reason for the request; and (c) a reference to the authority of the state agency to take the action requested.

The petitions' request is vague. The petitions' burden under the petition process is to specify the substance and nature of the adoption, amendment or repeal of regulations that are desired. The petitions have failed to carry this burden. The petitions seek that the Board amends 15 CCR § 2280 without stating

what changes are desired as to that section. Since that section refers to various subdivisions in § 2281, viz., subdivisions (c) and (d), the crux of the perceived problem is impliedly in § 2280's reference to § 2281. Section 2281 and each of its subdivisions cover parole suitability and not the base term (see the matrix in § 2282(b)). The petitions generally describe some type of changes desired to the parole suitability criteria in 15 CCR § 2281, without providing the language.

First and primarily, the petitions ask that the Board harmonizes §§ 2280, 2281(a) and 2281(b) with PC § 3041(c) in order to determine suitability, subject to specified base terms. However, PC § 3041(c) and the targeted regulations solely address suitability and not base terms. Therefore, conforming those regulations to the penal code section requires only a consideration of the suitability determination. The petitions assert that consistency between Board regulations and the statutes requires that suitability determinations made pursuant to PC § 3041(c) should apply the base term considerations from the time of the crime and not apply any standards adopted after the time of the crime.

The petitions allege that ex post facto prevents the Board from applying suitability regulations adopted in November 8, 1978 to prisoners whose commitment offense was committed previously. Generally, ex post facto prohibits government rules that constitute additional punishment on their face and are applied retroactively. To the extent that Board regulations on parole suitability were adopted after some crimes, they could potentially violate ex post facto. Title 15 CCR §§ 2280 and 2281(a) and 2281(b) were adopted on July 31, 1978. However, Board rules on parole suitability have been held not to constitute additional punishment and thus not to have violated ex post facto.<sup>4</sup> The court spelled this out quite clearly in the following excerpt:

*It cannot be said that [the prisoner] . . . could be disadvantaged by application of the DSL [Determinate Sentencing Law] guidelines to him; these newer regulations do not in any way decrease his parole eligibility or chance there for. Retrospective application of DSL regulations to him does not violate the ex post facto clause of either the United*

<sup>1</sup> U.S. Const. Art. I, § 10, cl. 1, Cal. Const. Art. I, § 9.

<sup>2</sup> Government Code (GC) § 12519.

<sup>3</sup> Mr. Samuel's petition was received on January 12, 2003. The Board tenders this "Decision on Petitions to Amend Regulations" in accord with GC § 11340.7. Since the 30<sup>th</sup> day fell on a state holiday—Lincoln's Birthday—the response must be filed by the next business day—February 13, 2003. See GC § 6707. The Board answers Mrs. Samuel's petition, and Mr. Samuel's January 31, 2003 petition at the same time.

<sup>4</sup> *In re Robert Seabock* (1983) 140 Cal.App.3d 29, 189 Cal.Rptr. 310. Although a prior case held that the Board's base term matrix violated ex post facto when applied to crimes preceding the revised matrix, *Seabock* noted that the Board's parole determination is comprised of two sequential phases, suitability and then term determination. *Seabock* distinguished the earlier case as invalidating retroactive application of the base term matrix and not affecting the parole suitability determination. *Seabock* at 40–41, discussing *In re Stanworth* (1982) 33 Cal.3d 176, 187 Cal.Rptr. 783.



*States or the California Constitution. What these newer—ex post—rules do is spell out what was always the fact and the law: the parole-setting agency is empowered to deny parole only after due consideration of all relevant factors including but not limited to the gravity and circumstance of the crimes involved.*<sup>5</sup>

Thus, ex post facto does not actually apply and could not invalidate the Board criteria on parole suitability set forth in 15 CCR §§ 2280, 2281(a), and 2281(b).

Second, the petitions allege that California's parole scheme creates a liberty interest in parole release.<sup>6</sup> Therefore, the petitions allege that the Board must change its parole criteria to recognize the prisoners' vested post-conviction credits and the suggested presumptive base terms applicable to those prisoners' crimes. The Ninth Circuit Court of Appeals in *McQuillion v. Duncan* held that the Board violated the prisoner's liberty interest when it rescinded a previously granted parole date. The remedy for liberty interest violations is typically one of due process, i.e. ordering a new hearing based upon appropriate criteria.

The Board asserts that the alleged existence of a liberty interest in time credits or base terms has no relevance to the determination of parole suitability. Since regulations on parole suitability [15 CCR §§ 2280, 2281(a) and 2281(b)] are the only subject of the petitions, cases interpreting base terms or credits applicable to base terms should not be considered.

Assuming for the sake of argument that those considerations were relevant to the petition, *McQuillion* isn't the final or only word on the subject. *In re Morrall*, a recent California decision, held that a prisoner "has no inherent or constitutional right to release before expiration of a valid [life] sentence."<sup>7</sup> In each case the decision weighing the facts of the crime and the individual strives to be equitable not scientific. "It is thus not surprising that there is no prescribed or defined combination of facts which, if shown, would mandate release on parole."<sup>8</sup> The Board's base term matrices [e.g. § 2282(b)] have received judicial review. "With respect to these determinations [parole suitability], the regulations [15 CCR §§ 2400–2407] provide general guidelines only [15 CCR §§ 2401, 2402(c) and (d)]. The

determination is to be made on consideration of each case on an individual basis."<sup>9</sup> PC § 3041(b) entitles the inmate to have a parole date set unless the Board determines that public safety requires a lengthier period.<sup>10</sup>

Even assuming for the sake of argument that a liberty interest also attaches to parole suitability criteria, and that *McQuillion* controls over *Morrall*, it would make no difference to the class of prisoners that the petitions purport to protect. *Seabock* analyzed the suitability criteria and held that there was no change to the suitability criteria among any of the relevant periods.<sup>11</sup> The Board has discretion under either ISL or DSL to delay a finding of parole suitability for prisoners who present significant risks to public safety.

For all these reasons, the Board denies the petitions.

## SUMMARY OF REGULATORY ACTIONS

### REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

#### BOARD OF ACCOUNTANCY

##### Continuing Education/Reports

In this regulatory action, the Board of Accountancy: (1) amends a regulation pertaining to the continuing education requirements for the Board's licensees (and particularly the requirements for those licensees engaged in specified accounting and auditing work), and (2) amends a regulation pertaining to licensees supplying to the Board's Report Quality Monitoring Committee copies of selected financial reports they have issued during the previous two years.

Title 16

California Code of Regulations

AMEND: 87, 89.1

Filed 02/18/03

Effective 03/20/03

Agency Contact: Aronna Granick (916) 263-3788

<sup>5</sup> *Seabock*, at p. 40, 317.

<sup>6</sup> *McQuillion v. Duncan* (9<sup>th</sup> Cir. 2002) 306 F.3d 895.

<sup>7</sup> *In re Morrall*, 102 Cal.App.4<sup>th</sup> 280, 287, 125 Cal.Rptr.2d 391, 398 (2002) citing *Greenholtz v. Inmates of Nebraska* 99 S.Ct. 2100, 60 L.Ed.2d 668, 675 (1979).

<sup>8</sup> Same cites. See *In re Schoengarth*, 425 P.2d 200 (Cal. 1967), in accord.

<sup>9</sup> *Morrall*, at p. 289, 400.

<sup>10</sup> *Morrall*, same cite, discusses the statutory scheme.

<sup>11</sup> *Seabock*, same cites.

**CALIFORNIA SCHOOL FINANCE AUTHORITY  
Charter School Facilities Program**

This emergency regulatory action adopts the requirements for financing charter school construction projects, pursuant to the Charter Schools Facilities Program.

**Title 4**

California Code of Regulations

ADOPT: 10151, 10152, 10153, 10154, 10155, 10156, 10157, 10158, 10159, 10160, 10161, 10162

Filed 02/13/03

Effective 02/13/03

Agency Contact: Mark Paxson (916) 651-6846

**DEPARTMENT OF CORRECTIONS****Visiting Regulations**

This action updates and reorganizes the statewide regulations on visiting prisoners in the custody of the Department of Corrections.

**Title 15**

California Code of Regulations

ADOPT: 3054.2(e)(2)(H), 3170, 3170.1, 3171, 3172, 3172.1, 3172.2, 3173, 3173.1, 3173.2, 3174, 3175, 3176, 3176.1, 3176.2, 3176.3, 3176.4, 3177, 3178, 3179 AMEND: 3045.2(e)(2)(F) REPEAL: 3170, 3170.5, 3171, 3172, 3173, 3174, 3175, 3176, 3177, 3178, 3179

Filed 02/18/03

Effective 03/20/03

Agency Contact: Ellery Kuhn (916) 322-9731

**DEPARTMENT OF MANAGED HEALTH CARE****Independand Medical Review / Grievance Procedures, Section 1300.74.30**

This action is the resubmittal of a previously disapproved regulation establishing an independent medical review system for managed health plans. This regulation was initially submitted as part of OAL file number 02-0927-01S.

**Title 28**

California Code of Regulations

ADOPT: 1300.74.30

Filed 02/18/03

Effective 03/20/03

Agency Contact:

Lyn Amor Macaraeg (916) 322-9727

**DEPARTMENT OF MOTOR VEHICLES****Advertising by Occupational Licensee**

The Department of Motor Vehicles is repealing sections 260.01, 262.00, and 262.05, title 13, California Code of Regulations expressly required by Ch. 947, Sec. 6, Stats. 2002. This repeal according to the aforementioned chapter is operative the date of the act, which is September 27, 2002.

**Title 13**

California Code of Regulations

REPEAL: 260.01, 262.00, 262.05

Filed 02/18/03

Effective 03/20/03

Agency Contact: John Urakawa (916) 657-9927

**DEPARTMENT OF REAL ESTATE****Conflict of Interest Code**

This is a Conflict of Interest Code filing that has been approved and certified by the Fair Political Practices Commission and is being submitted for filing with the Secretary of State and printing in the California Code of Regulations only.

**Title 10**

California Code of Regulations

AMEND: 3200

Filed 02/13/03

Effective 03/15/03

Agency Contact:

Larry A. Alamao (916) 227-0789

**DEPARTMENT OF SOCIAL SERVICES****Child Welfare Services Provisions of AB 1696**

This emergency readoption implements recent legislation which exempts from the California Community Care Facilities Act, approved homes of relatives and non relative extended family members when children are placed by the juvenile court.

**Title MPP**

California Code of Regulations

AMEND: 31-001, 31-002, 31-075, 31-401, 31-410, 31-420, 31-440, 31-445

Filed 02/18/03

Effective 02/28/03

Agency Contact:

Anthony J. Velasquez (916) 657-2586

**DEPARTMENT OF SOCIAL SERVICES****Electronic Benefit Transfer (EBT)**

This certification of compliance of an exempt emergency action implements federal regulations and state law mandating the counties to provide food stamp and some other public benefits by electronic transfer.

**Title MPP**

California Code of Regulations

ADOPT: 16-001, 16-003, 16-005, 16-010, 16-015, 16-105, 16-120, 16-130, 16-201, 16-215, 16-301, 16-310, 16-315, 16-320, 16-325, 16-401, 16-410, 16-501, 16-505, 16-510, 16-515, 16-517, 16-520, 16-601, 16-610, 16-701, 16-750, and 16-801

AMEND: 20-300, 44-3

Filed 02/13/03

Effective 02/13/03

Agency Contact:

Anthony J. Velasquez (916) 657-2586

**DEPARTMENT OF TOXIC SUBSTANCES  
CONTROL  
Mercury Waste Classification and Management**

This rulemaking action lists four types of mercury containing products that, when discarded, are classified as hazardous waste: (1) effective January 1, 2005, mercury-containing motor vehicle light switches, and any motor vehicle that contains such switches when any person decides to crush, bale, shred, or shear the vehicle, (2) effective February 9, 2006, non-automotive mercury switches and any product that contains such switches, (3) effective February 9, 2004, lamps that contain intentionally-added mercury and products with lamps that contain intentionally-added mercury, and (4) effective January 1, 2004, mercury-added novelties. The action also establish new standards for the management of the listed mercury containing wastes and for several other widely generated wastes (dental amalgam wastes, pressure or vacuum gauges, mercury counterweights and dampers, mercury thermometers, dilators and weighted tubing, mercury-containing rubber flooring, and mercury gas flow regulators) as universal wastes. In most cases, universal waste management is conditioned on ultimately recycling the mercury contained in the discarded products.

Title 22  
California Code of Regulations  
ADOPT: 66260.10, 66260.22, 66261.50, 66273.7.1, 66273.7.2, 66273.7.3, 66273.7.4, 66273.7.5, 66273.7.7, 66273.7.8, 66273.7.9, 66273.10, 66273.21, 66273.41 AMEND: 66261.1, 66261.3, 66261.6, 66261.9, 66261.101, 66262.11, 66264.1, 66265.1, 66268.1, 66270.1  
Filed 02/13/03  
Effective 03/15/03  
Agency Contact: Joan Ferber (916) 322-6409

**FAIR POLITICAL PRACTICES COMMISSION  
Audits of Campaign Reports and Statement**

This section on audits of campaign reports and statements is being amended and its format style standardized.

Title 2  
California Code of Regulations  
AMEND: 18991  
Filed 02/18/03  
Effective 02/18/03  
Agency Contact: Jennie Eddy (916) 322-5660

**FAIR POLITICAL PRACTICES COMMISSION  
Real Property Directly or Indirectly Involved in Governmental Decision**

This action amends and reorganizes this section on real property directly or indirectly involved in governmental decisions.

Title 2  
California Code of Regulations  
AMEND: 18704.2  
Filed 02/18/03  
Effective 02/18/03  
Agency Contact: John Wallace (916) 445-4812

**OFFICE OF ENVIRONMENTAL HEALTH  
HAZARD ASSESSMENT  
Chemicals Formally Identified by Authoritative Bodies**

The Office of Environmental Health Hazard Assessment is amending the captioned section to add "National Toxicology Program" to the list of identified authoritative bodies for purposes of identifying chemicals as causing reproductive toxicity.

Title 22  
California Code of Regulations  
AMEND: 12306  
Filed 02/19/03  
Effective 03/21/03  
Agency Contact: Cynthia Oshita (916) 322-2068

**OFFICE OF ENVIRONMENTAL HEALTH  
HAZARD ASSESSMENT  
No Significant Risk, Observable Effect Levels (Proposition 65)**

This rulemaking action establishes specific regulatory levels posing no significant risk for benzofuran, N-carboxymethyl-N-nitrosourea, p-chloro-o-toluidine hydrochloride, 3,3'-dimethoxybenzidine; 3, 3' dimethoxybenzidine dihydrochloride, 3,3'dimethylbenzidine, 3,3'- dimethylbenzidine dihydrochloride, isobutyl nitrite, 2-methylaziridine (propyleneimine), nalidixic acid, phenyl glycidyl ether, o-phenylenediamine, o-phenylenediamine dihydrochloride, tetranitromethane, and 2, 6-xylydine, and establishes specific regulatory levels having no observable effect for linuron.

Title 22  
California Code of Regulations  
AMEND: 12705, 12805  
Filed 02/19/03  
Effective 03/21/03  
Agency Contact: Susan Luong (916) 327-3015

**PHYSICIAN ASSISTANT COMMITTEE  
Interim Approval to Practice as a PA**

This regulatory action clarifies issues concerning interim approval of physician assistants.

Title 16  
California Code of Regulations  
AMEND: 1399.508  
Filed 02/13/03  
Effective 03/15/03  
Agency Contact:  
Glenn L. Mitchell (916) 263-2670 ext. 203

**STATE ALLOCATION BOARD**

Lokey F. Greene School Facilities Act of 1998—60/40

This Certificate of Compliance completes the emergency regulatory action implementing urgency legislation (AB 16, Chapter 33, Statutes 2002, effective April 29, 2002), which changed the funding ratio for modernization program grants from 80/20 to 60/40 retroactively as of March 15, 2002, increasing school districts' matching responsibilities.

Title 2

California Code of Regulations

AMEND: 1859.79, 1859.79.3, 1859.81.1, 1859.83, 1859.107

Filed 02/19/03

Effective 02/19/03

Agency Contact: Lisa Jones (916) 322-1043

**STATE ALLOCATION BOARD**

Lokey F. Green School Facilities Act of 1998—Use of NC Grants

This emergency rulemaking will limit the number of projects that can utilize Use of Grants (UOG) and will eliminate the method of multi-track year-round education as a means to house displaced students.

Title 2

California Code of Regulations

AMEND: 1859.77.2

Filed 02/13/03

Effective 02/13/03

Agency Contact: Lisa Jones (916) 322-1043

**STATE ALLOCATION BOARD**

Lokey F. Greene School Facilities Act of 1998—Charter School Program

The Lokey F. Greene School Facilities Act of 1998 makes funding available to eligible school districts for various purposes related to school facilities, including construction and modernization. Assembly Bill No. 14 (stats. 2002, ch. 935) became effective January 1 2003, which in part established the Charter School Facilities Program to provide funding to qualifying entities for the purpose of establishing school facilities for charter school pupils. This regulatory action implements this new program and is deemed an emergency pursuant to section 17078.64(b) of the Education Code.

Title 2

California Code of Regulations

ADOPT: 1859.160, 1859.161, 1859.162, 1859.162.1, 1859.163, 1859.164, 1859.164.1, 1859.165, 1859.166, 1859.166.1, 1859.167, 1859.168, 1859.169, 1859.170, 1859.171 AMEND: 1859.2, 1859.51, 1859.103, 1859.106, 1859.145.1

Filed 02/13/03

Effective 02/13/03

Agency Contact: Lisa Jones (916) 322-1043

**CCR CHANGES FILED WITH THE SECRETARY OF STATE**

**WITHIN OCTOBER 16, 2002**

**TO FEBRUARY 19, 2003**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 1**

01/21/03 REPEAL: 121, 122, 123, 124, 125, 125.5, 126, 127, 128, Appendix A

10/29/02 AMEND: 1, 100

**Title 2**

02/19/03 AMEND: 1859.79, 1859.79.3, 1859.81.1, 1859.83, 1859.107

02/18/03 AMEND: 18704.2

02/18/03 AMEND: 18991

02/13/03 ADOPT: 1859.160, 1859.161, 1859.162, 1859.162.1, 1859.163, 1859.164, 1859.164.1, 1859.165, 1859.166, 1859.166.1, 1859.167, 1859.168, 1859.169, 1859.170, 1859.171 AMEND: 1859.2, 1859.51, 1859.103, 1859.106, 1859.145.1

02/13/03 AMEND: 1859.77.2

02/11/03 AMEND: 1555

02/11/03 AMEND: 1897

02/06/03 ADOPT: 1859.74.5, 1859.74.6, 1859.81.2, 1859.81.3, 1859.105.2 AMEND: 1859.2, 1859.74, 1859.76, 1859.77.1, 1859.81.1, 1859.90, 1859.103, 1859.104

02/03/03 ADOPT: 649.23, 649.24, 649.25

02/03/03 AMEND: 649.11

01/30/03 ADOPT: 18530.2

01/16/03 AMEND: 18703.4, 18730, 18940.2, 18942.1, 18943

01/16/03 AMEND: 18705.1

01/16/03 ADOPT: 1859.71.2, 1859.78.4, 1859.108 AMEND: 1859.50, 1859.70, 1859.72, 1859.73.1, 1859.73.2, 1859.74.1, 1859.75.1, 1859.76, 1859.78.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.100, 1859.101, 1859.102, 1859.107

01/16/03 ADOPT: 18545

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12/10/02 ADOPT: 58700

11/26/02 AMEND: 57.1

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12/24/02 ADOPT: 1392.12

12/12/02 AMEND: 3417(b)

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12/05/02 AMEND: 6550

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12/02/02 AMEND: 1392.1, 1392.2, 1392.4,  
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11/12/02 ADOPT: 4600, 4601, 4602, 4603

11/07/02 AMEND: 6000, 6710

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10/24/02 AMEND: 1380.19, 1430.10, 1430.12,  
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10/17/02 ADOPT: 3650, 3651, 3652, 3653, 3654,  
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12/12/02 ADOPT: 12100, 12101, 12104, 12105,  
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12/05/02 ADOPT: 12309, 12310 AMEND:  
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42397.7, 42397.8, 42397.9, 42397.10,  
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12/23/02 AMEND: 80054.5, 80020.4.1

12/10/02 ADOPT: 11983.5

12/09/02 AMEND: 80054

12/05/02 AMEND: 30950, 30951, 30951.1, 30952,  
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01/28/03 AMEND: 1604.5(c)(3) 1604.6(a)

01/21/03 ADOPT: 339.9 AMEND: 339.8.1

01/09/03 AMEND: 9771, 9771.2, 9771.66, 9772,  
9779, 9779.1, 9779.3, 9779.4, 9779.45

01/09/03 ADOPT: 412.2 AMEND: 403, 404,  
405.1, 411, 411.1, 411.2, 418, 420 RE-  
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01/06/03 AMEND: 1527  
 01/03/03 AMEND: 344.30  
 12/30/02 ADOPT: 10114.1, 10114.2, 10114.3,  
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 01/13/03 ADOPT: 2498.6  
 01/02/03 AMEND: 2509.40, 2509.41, 2509.42,  
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 01/09/03 ADOPT: 52.00, 52.01, 52.02, 52.03,  
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 11/18/02 AMEND: 932.9, 952.9  
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